

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11523 Financial assurance; cash bond; interest; reduction in bond; termination; noncompliance with closure and postclosure monitoring and maintenance requirements; expiration or cancellation notice; effect of bankruptcy action; perpetual care fund; alternate financial assurance.

Sec. 11523. (1) The department shall not issue a license to operate a disposal area unless the applicant has filed, as a part of the application for a license, evidence of the following financial assurance:

(a) Financial assurance established for a type III landfill or a preexisting unit at a type II landfill and until April 9, 1997, existing and new type II landfills shall be in the form of a bond in an amount equal to \$20,000.00 per acre of licensed landfill within the solid waste boundary. However, the amount of the bond shall not be less than \$20,000.00 or more than \$1,000,000.00. Each bond shall provide assurance for the maintenance of the finished landfill site for a period of 30 years after the landfill or any approved portion is completed. In addition to this bond, a perpetual care fund shall be maintained under section 11525.

(b) Financial assurance for a type II landfill that is an existing unit or a new unit shall be in an amount equal to the cost, in current dollars, of hiring a third party, to conduct closure, postclosure maintenance and monitoring, and if necessary, corrective action. An application for a type II landfill that is an existing unit or new unit shall demonstrate financial assurance in accordance with section 11523a.

(c) Financial assurance established for a solid waste transfer facility, incinerator, processing plant, other solid waste handling or disposal facility, or a combination of these utilized in the disposal of solid waste shall be in the form of a bond in an amount equal to 1/4 of 1% of the construction cost of the facility, but shall not be less than \$4,000.00, and shall be continued in effect for a period of 2 years after the disposal area is closed.

(2) The owner or operator of a landfill may post a cash bond with the department instead of other bonding mechanisms to fulfill the remaining financial assurance requirements of this section. An owner or operator of a disposal area who elects to post cash as a bond shall accrue interest on that bond at the annual rate of 6%, to be accrued quarterly, except that the interest rate payable to an owner or operator shall not exceed the rate of interest accrued on the state common cash fund for the quarter in which an accrual is determined. Interest shall be paid to the owner or operator upon release of the bond by the department. Any interest greater than 6% shall be deposited in the state treasury to the credit of the general fund and shall be appropriated to the department to be used by the department for administration of this part.

(3) An owner or operator of a disposal area that is not a landfill who has accomplished closure in a manner approved by the department and in accordance with this part and the rules promulgated under this part, may request a 50% reduction in the bond during the 2-year period after closure. At the end of the 2-year period, the owner or operator may request that the department terminate the bond. The department shall approve termination of the bond within 60 days after the request is made if all waste and waste residues have been removed from the disposal area and closure is certified.

(4) The department may utilize a bond required under this section for the closure and postclosure monitoring and maintenance of a disposal area if the owner or operator fails to comply with the closure and postclosure monitoring and maintenance requirements of this part and the rules promulgated under this part to the extent necessary to correct such violations. At least 7 days before utilizing the bond, the department shall issue a notice of violation or other order that alleges violation of this part or rules promulgated under this part and provide an opportunity for a hearing. This subsection does not apply to a perpetual care fund bond.

(5) Under the terms of a surety bond, letter of credit, insurance policy, or perpetual care fund bond, the issuing institution shall notify both the department and the owner or operator at least 120 days before the expiration date or any cancellation of the bond. If the owner or operator does not extend the effective date of the bond, or establish alternate financial assurance within 90 days after receipt of an expiration or cancellation notice from the issuing institution, all of the following apply:

(a) The department may draw on the bond.

(b) In the case of a perpetual care fund bond, the issuing institution shall deposit the proceeds into the standby trust or escrow account unless the department agrees to the expiration or cancellation of the perpetual care fund bond.

(6) The department shall not issue a construction permit or a new license to operate a disposal area to an applicant that is the subject of a bankruptcy action commenced under title 11 of the United States Code, 11 USC 101 to 1532, or any other predecessor or successor statute.

(7) A person required under this section to provide financial assurance in the form of a bond for a landfill may request a reduction in the bond based upon the amount of the perpetual care fund established under section 11525. A person requesting a bond reduction shall do so on a form consistent with this part and

provided by the department. The department shall grant this request unless there are sufficient grounds for denial and those reasons are provided in writing. The department shall grant or deny a request for a reduction of the bond within 60 days after the request is made. If the department grants a request for a reduced bond, the department shall require a bond in an amount such that for type III landfills, and type II landfills that are preexisting units, the amount of the perpetual care fund plus the amount of the reduced bond equals the maximum amount required in a perpetual care fund in section 11525(2).

(8) The department shall release the bond required by this section if the amount of the perpetual care fund exceeds the amount of the financial assurance required under subsection (1).

(9) Prior to closure of a landfill, if money is disbursed from the perpetual care fund, then the department may require a corresponding increase in the amount of bonding required to be provided if necessary to meet the requirements of this section.

(10) If an owner or operator of a disposal area fulfills the financial assurance requirements of this part by obtaining a bond, including, but not limited to, a perpetual care fund bond, and the surety company, insurer, trustee, bank, or financial or other institution that issued or holds the bond becomes the subject of a bankruptcy action or has its authority to issue or hold the bond or to act as an escrow agent or trustee suspended or revoked, the owner or operator shall, within 60 days after receiving notice of that event, establish alternate financial assurance under this part.

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